

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 24 (MONA ELECTRIC)

and

Case 5-CB-10616

JOHN D. REECHEL, AN INDIVIDUAL

Johnda Bentley, Esq., and Thomas J. Murphy, Esq., of Baltimore, MD,
for the General Counsel.

Clark D. Browne, of Greenbelt, MD,
for the Charging Party.

John M. Singleton, Esq., of Owings Mills, MD,
for the Respondent-Union.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on February 1 and 2, 2010, in Baltimore, MD, pursuant to a Complaint and Notice of Hearing (the complaint) issued on October 30, 2009¹ by the Regional Director for Region 5 of the National Labor Relations Board (the Board). The complaint, based upon a charge filed on July 2, by John D. Reechele (the Charging Party or Reechele), alleges that International Brotherhood of Electrical Workers, Local 24 (the Respondent or Union), has engaged in certain violations of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that the Respondent violated Section 8(b)(1)(A) of the Act by maintaining a policy and informing applicants and members that they were prohibited from recording telephone numbers or any other information from the referral records related to its operation of an exclusive hiring hall.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

¹ All dates are in 2009 unless otherwise indicated.

Findings of Fact

I. Jurisdiction

5 Mona Electric Group, Inc. (the Employer), is a Maryland Corporation with an office and
place of business located in Clinton, Maryland, and is engaged in the business of providing
electrical services. During the preceding twelve months, a representative period, the Employer
has performed services in excess of \$50,000 in states other than the State of Maryland,
including the District of Columbia. The Respondent admits and I find that the Employer is
10 engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the
Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

15 At all material times, the Employer has been a member of the Baltimore Division,
Maryland Chapter, National Electrical Contractors Association, (NECA) that is composed of
various employers engaged in the electrical contracting industry, one purpose of which is to
20 represent its employer-members in negotiating and administering collective-bargaining
agreements with the Respondent. On or about June 1, 2008, the Respondent entered into a
collective-bargaining agreement with NECA that is effective until May 31, 2011. Since at least
June 1, 2008, the Employer who is engaged in the building and construction industry, granted
recognition to the Respondent as the exclusive collective-bargaining representative of the Unit
25 and, since that date, the Respondent has been recognized as such representative by the
Employer without regard to whether the majority status of Respondent had ever been
established under the provisions of Section 9(a) of the Act. Since at least June 1, 2008, the
Respondent and NECA have entered into and, since that date, have maintained a collective-
bargaining agreement requiring, inter alia, that the Union be the sole and exclusive source of
30 referrals of employees to work as electricians in the following classifications: general foreman,
foreman, sub-foreman, journeyman and apprentice (GC Exh. 2-Section 4.02).

 At all material times, Gary Griffin has served as the Business Manager of the
Respondent while Peter Demchuk holds the position of President.

B. The 8(b)(1)(A) Allegations

 The General Counsel alleges in paragraphs 8 and 9(c) of the complaint that the
Respondent has orally promulgated a policy and informed applicants and members that they
40 are not permitted to review and record telephone numbers or any other information from the
referral records related to the operation of its exclusive hiring hall.

The Hiring Hall Rules (GC Exh. 3)

45 No applicant for employment shall be registered unless he appears at the hiring hall in
person and requests to sign the respective out of work book. (Groups I, II, III, IV)² This may be

² Group I consists of all applicants for employment who have four (4) or more years
experience in the trade, are residents of the geographical area constituting the normal
construction labor market, have passed a Journeyman Wireman's examination given by a duly
constituted inside Construction Local Union of the IBEW, or have been certified as a

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done Monday through Friday, 8:00 a.m.-5:00 p.m. (except holidays).

Upon requesting to register on the out-of-work list,³ all applicants shall complete an application for referral. All persons registered on the out-of-work list shall re-sign within 30 days of each registration and/or re-sign date. Re-signs may take place by signing the appropriate out-of-work list in person, by mail, e-mail or by fax.

Manpower calls for the following day will be posted on a job hotline and available for review after 6:00 p.m. Applicants seeking any available job must register on a daily sheet (Day Book) that is only available Monday-Friday, from 8:00 a.m.-8:45 a.m. (sharp).

Referrals will then be processed in the manner of the lowest number on the out-of-work list to the highest number on the out-of-work list for those who have signed the Day Book. Job call starts will commence immediately after the Day Book sign-up is complete.

Facts

The Charging Party is a journeyman wireman with over 20 years experience in the trade and is a dues-paying member of the Respondent. In January 2004, the Charging Party formed Sovereign Electric, LLC. In his capacity as Owner/President, he signed on February 5, 2004, a Letter of Assent with NECA and the Respondent (GC Exh. 4). By the execution of that agreement the Charging Party agreed to be bound by all of the provisions contained in the current and subsequent labor agreements between NECA and the Respondent. The terms of the Letter of Assent establish that it shall remain in effect until terminated by the Charging Party by giving written notice to NECA and the Respondent at least one hundred fifty (150) days prior to the then current anniversary date of the applicable approved labor agreement.

The Charging Party, due to financial constraints, suffered the forfeiture of the Sovereign Electric, LLC Charter in December 2008 (GC Exh. 20). By letters dated October 20, and January 18, 2010, the Charging Party notified the Respondent and NECA that he would like to dissolve the Letter of Assent immediately (GC Exh. 10 and 19).

The Charging Party, on March 19, signed the out-of-work list for Group I.⁴ In reviewing

Journeyman Wireman by any inside Joint Apprenticeship and Training Committee, and, who have been employed in the trade for a period of at least one year in the last four years in the geographical area covered by the collective bargaining agreement. Group II covers all applicants for employment who have four or more years' experience in the trade and who have passed a Journeyman Wireman's examination given by a duly constituted Inside Construction Local Union of the IBEW, or have been certified as a Journeyman Wireman by an Inside Joint Apprenticeship Training Committee. Group III includes all applicants for employment who have two (2) or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market, and who have been employed for at least six (6) months in the last three (3) years in the geographical area covered by the collective bargaining agreement. Group IV consists of all applicants for employment who have worked at the trade for more than one year.

³ The out-of-work list consists of the applicants name, card number, and telephone number.

⁴ Once an individual is registered on the out-of-work list, any employer needing manpower sends a form into the Union hall, and those jobs are listed on the telephone hotline at night so every unemployed member can hear what jobs are available. Signing the out-of-work list establishes your place in line. Signing the daybook let's the referral agent know exactly who is

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his March 27 referral application, the Respondent determined that the Charging Party did not qualify for Group I status because he did not submit sufficient documentation to conclusively establish that he was employed in the trade for a period of at least one year in the last four years in the geographic area covered by the collective-bargaining agreement between NECA and the Respondent. The Respondent notified the Charging Party of this deficiency and in a telephone conversation between the Charging Party and Griffin on March 30, Reechel was informed that he must provide documentation to establish his qualifications for Group I. The Charging Party signed the out-of-work list for Group I a second time on April 20 but did not do so in May 2009. Accordingly, he was dropped from the out-of-work list because he exceeded the 30 day re-sign period.

By letter dated April 5, the Charging Party requested a hearing before the Referral Appeals Committee under Article IV of the collective-bargaining agreement between NECA and the Respondent (GC Exh. 12).

By letter dated April 9, the Respondent informed the Charging Party that he must provide verifiable proof of employment in the trade for one of the last four years in Respondent's geographic jurisdiction. Additionally, the Respondent informed the Charging Party that examples of such proof could be W-2's, paycheck stubs, or tax returns (GC Exh. 5).

By letter dated April 16, the Charging Party informed the Respondent that he would like to inspect the referral records for the hiring hall (GC Exh. 15).

By letter dated April 21, the Appeals committee acknowledged receipt of the Charging Party's complaint regarding not being allowed to sign the Group I Referral Book. The Committee scheduled a hearing date of May 6 to address the complaint (GC Exh. 13).

By letter dated May 5, the Respondent requested the Charging Party to provide specifics regarding which referral records and dates he was looking for (GC Exh. 16).

By letter dated May 10, the Charging Party informed the Respondent that he wanted to review Book I, II, and III from 2/01/05-5/10/09 (GC Exh. 17).

By letter dated May 13, the Respondent reserved May 21 for the Charging Party to review the referral records (GC Exh. 18).

By letter dated May 13, the Appeals Committee informed the Charging Party that due to a lack of evidence and his inability to establish that he met the requirements to sign Referral Book I, it had no option but to affirm the Business Managers prior ruling (GC Exh. 14).⁵

The Charging Party, on May 21, appeared at the Respondent's hiring hall to inspect Books I, II, and III. Demchuk informed the Charging Party that while he could review the records no notes or any other information could be copied from the referral books.

On or about January 12, former Union President Willard Richardson sent a letter to the Respondent asserting that he had reason to believe that the referral procedures had been

in the Union hall that day so the individual can be placed in order and referred for work when jobs are available.

⁵ The Charging Party filed an unfair labor practice charge on June 11 in Case 5-CB-10598 raising the same allegations. After investigation, Region 5 dismissed the charge on September 16 (R Exh. 2).

administered in a disparate fashion regarding his placement and eligibility for Group I (GC Exh. 23). In this regard, he believed that there were other individuals similar to him that had not worked in the geographic jurisdiction of the Union for a period of at least one year in the last four years yet were still permitted to be placed on the Book I out-of-work list. Richardson requested permission to examine the referral records including the out-of-work list, registers and applications of applicants, referral slips issued and any other logs or registers of dispatches made from January 1, 1999 to January 11. Richardson further informed the Respondent that at the time of his examination of the documents, he may request copies of pertinent records.

In late January 2009, Richardson went to the hiring hall and was permitted to review the hiring hall records. Both Griffin and Demchuk were present during the review process. While Richardson was permitted to copy information from the out-of-work list including dates and names, he was informed by Griffin that he could not copy or record telephone numbers of those individuals on the out-of-work list. Richardson returned to the hiring hall twice in February 2009 and once in July 2009 to continue reviewing the referral records but did not attempt to record telephone numbers based on the prior admonition from Griffin.

In early February 2009, Richardson filed an appeal with the Appeals Committee regarding the administration of the referral procedures by the Respondent. The Appeals committee scheduled a hearing to take place at the Respondent's hiring hall on February 25 (GC Exh. 21).

On March 2, the Appeals Committee issued its decision concerning the complaint that Richardson had filed. It found the three allegations that Richardson alleged regarding violations of the referral procedures could not be substantiated (GC Exh. 22).⁶

Richardson testified that the Respondent, during political campaigns for local and Presidential elections, has made available the telephone numbers of members to canvasses them for political reasons. The Respondent did not rebut this testimony.

Griffin testified that around 1998, and continuing since he became Business Manager in July 2007, the Respondent maintained a policy prohibiting applicants or members from copying telephone numbers from the referral records. This policy/practice is unwritten and has never been memorialized as part of its hiring hall rules (GC Exh. 3). Griffin admitted that telephone numbers of members who are sick are released if a fellow Union member contacts the hiring hall and specifically requests a sick member's telephone number. Griffin also acknowledged that while Union members are reviewing the hiring hall records, there is nothing preventing them from seeing the telephone numbers of other applicants and it is possible that they could memorialize them at a later time. Lastly, Griffin noted that during his tenure as Business Manager, only the Charging Party and Richardson have asked to review the hiring hall records and record telephone numbers of individuals on the out-of-work list. He also testified that during his tenure, approximately ten Union members out of a membership of 2300 have complained about the release of their telephone numbers.

⁶ Richardson filed an unfair labor practice charge in Case 5-CB-10557 raising the same allegations. After investigation, Region 5 dismissed the charge and on appeal the General Counsel, on August 25, sustained the dismissal (R Exh. 1).

Discussion

5 A union's duty of fair representation includes an obligation to provide access to job referral lists to allow an individual to determine whether his referral rights are being protected. *Operating Engineers Local 324*, 226 NLRB 587 (1976); *Boilermakers Local 197*, 318 NLRB 205 (1995). Thus, a union violates Section 8(b)(1)(A) when it arbitrarily denies a member's request for job referral information, when that request is reasonably directed towards ascertaining whether the member has been fairly treated with respect to obtaining job referrals. *NLRB v. Carpenters Local 608*, 811 F.2d 149, 152 (2nd Cir.1987), enfg. 279 NLRB 747 (1986). When a member seeks photocopies of hiring hall information because he reasonably believes he has been treated unfairly by the hiring hall, the union acts arbitrarily by denying the requested photocopies, unless the union can show the refusal is necessary to vindicate legitimate union interests. *Carpenters Local 608, supra*, at 755-757. See also *Carpenters Local 35 (Construction Employers Assn.)*, 317 NLRB 18 (1995).

In paragraph 8 of the complaint, the General Counsel alleges that the Respondent prohibited applicants from recording telephone numbers from the referral hall records.

20 Griffin admitted in his testimony that since at least 1998, the Respondent has maintained an unwritten rule that members or applicants are precluded from recording telephone numbers from the hiring hall records. This practice was in effect when Richardson was permitted to review the hiring hall records in January, February, and July of 2009, but was told he could not record any telephone numbers from those records.

25 The evidence conclusively establishes that Richardson informed the Respondent that he believed the hiring hall referral rules have been improperly administrated and have negatively impacted his ability to be referred for available work opportunities (GC Exh. 23).

30 The Respondent's arguments that objections from its membership to the release of their telephone numbers from the hiring hall records because of privacy concerns is rejected for the following reasons. First, the Respondent has no prohibition against applicants and members reviewing the hiring hall records including the out-of-work list that contains the name of the member, card number and telephone number. Second, the Respondent during political campaigns for local and Presidential elections has made available the telephone numbers of members to canvasses them for political reasons. Third, if a member requests the telephone number of a sick co-worker to offer get-will wishes, the Respondent will provide the member with the telephone number. Fourth, since at least July 2007, only approximately 10 Union members out of a total membership of 2300 have objected to the release of their telephone numbers.

40 Under these circumstances, and in agreement with the General Counsel, when as here a member seeks to photocopy or record telephone numbers from the hiring hall records because he or she reasonably believes they have been treated unfairly, the Union acts arbitrarily by denying the requested information. Accordingly, I find that by denying Richardson the right to photocopy or record telephone numbers from the out-of-work list, the Respondent has violated Section 8(b)(1)(A) of the Act. *Carpenters Local 102 (Millwright Employers Association)*, 317 NLRB 1099 (1995) (Prohibiting the copying of phone numbers from hiring hall records violates Section 8(b)(1)(A) of the Act).

In Paragraph 9 of the complaint, the General Counsel alleges that the Respondent was aware that the Charging Party reasonably believed he was improperly barred from signing the book for referral, from Group I, out of the referral hall and that around May 21, Demchuk told the Charging Party that he could not record any information from the referral hall records.

The evidence establishes that the Charging Party filed on June 11, an unfair labor practice charge against the Respondent in Case 5-CB-10598 (R Exh. 2). In dismissing the unfair labor practice charge on September 16, Region 5 noted that the Charging Party indicated that he was employed by his own company, Sovereign Electric, LLC, both in the trade and in the geographical area covered by the collective-bargaining agreement, and entered into a Letter of Assent with the Respondent in 2004 (GC Exh. 4). The Letter of Assent states, inter alia, that Sovereign Electric, LLC agrees to be bound by the provisions of the labor agreement between the Respondent and NECA.

Reference to the collective bargaining agreement (GC Exh. 2) shows that Section 4.18 provides that "A representative of the Employer or the Association, as the case may be, designated to the Union in writing, shall be permitted to inspect the Referral Procedure records at any time during normal business hours." The record confirms, and the Charging Party admits, that during 2009 the Letter of Assent that he previously executed as the owner of Sovereign Electric, LLC was in full force and effect.⁷ Thus, by permitting the Charging Party to review the hiring hall records including the out-of-work list on May 21, the Respondent fully complied with the requirements of the collective-bargaining agreement. Under those circumstances, there was no requirement to permit the Charging Party to record any information from the hiring hall records including telephone numbers. Additionally, I find that the General Counsel did not conclusively establish that the Respondent was aware that the Charging Party reasonably believed he was improperly barred from signing the book for referral, from Group I, out of the referral hall. In any event, due to the Charging Party's status as an Employer, the Respondent fully complied with its obligations under the collective-bargaining agreement.⁸

Under these circumstances, I find that the Respondent did not violate paragraph 9 of the complaint or Section 8(b)(1)(A) of the Act.

Conclusions of Law

1. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(b)(1)(A) of the Act when it maintained a policy that prohibited applicants and members from recording telephone numbers from the referral hall records related to the operation of its exclusive hiring hall.

⁷ The Charging Party did not attempt to dissolve the Letter of Assent until October 20 with the Respondent and January 18, 2010 with NECA. The Letter of Assent provides, however, that it can not be terminated until after the expiration of the current collective bargaining agreement which in this case remains in effect until May 31, 2011.

⁸ In its post-hearing brief, the General Counsel recognizes that if Reechel is an Employer and not an employee under the Act at the time he requested to review the referral records, the Act would not be violated.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, International Brotherhood of Electrical Workers, Local 24, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Denying requests for photocopies or to record telephone numbers contained in referral records from employees who are registered for referral from its exclusive hiring hall and who reasonably believe they have been improperly denied referrals.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor Willard Richardson's request for photocopies or to record telephone numbers contained in our referral records.

(b) Within 14 days after service by the Region, post at its union office and hiring hall copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 5 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 26, 2009.

⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁰ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(d) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. April 7, 2010

Bruce D. Rosenstein
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS

5

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

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WE WILL NOT arbitrarily deny requests for photocopies or to record telephone numbers contained in our referral records from employees who are registered for referral from our exclusive hiring hall and who reasonably believe they have been improperly denied referrals.

20

WE WILL NOT maintain a policy prohibiting applicants who are registered for referral from our exclusive hiring hall and who reasonably believe they have been improperly denied referral from recording telephone numbers from referral records.

WE Will NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

25

WE WILL honor Willard Richardson's request for photocopies or to record telephone numbers contained in our referral records.

30

WE WILL rescind our policy of prohibiting applicants who are registered for referral from our exclusive hiring hall and who reasonably believe they have been improperly denied referral from recording telephone numbers from referral records.

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International Brotherhood of Electrical Workers,
Local 24 (MONA ELECTRIC)

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

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The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

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103 South Gay Street, The Appraisers Store Building, 8th Floor
Baltimore, MD 21202-4061
Hours: 8:15 a.m. to 4:45 p.m.
410-962-2822.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 410-962-2864.

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